

Applicants: Rolando Pajon Feyt, et al.
Serial No.: 10/580,888
Filing Date: May 25, 2006
Docket No.: 976-33 PCT/US/RCE
Response to non-final office action issued March 13, 2009
Page 7 of 11

REMARKS

Prior to the present amendment, claims 32, 35-38, 40, 43-45, 47, and 48 were pending. By the present amendment, applicants have canceled claims 32, 35-38, 40, and 43-45, amended claims 47-48, and added new claims 49-57. No new matter has been added by these amendments. Accordingly, claims 47-57 are under examination.

Objections to the Specification

On page 2 of the office action, the examiner objects to the specification for containing embedded hyperlinks. Applicants have undertaken to amend the specification to remove the hyperlinks. Accordingly, the objections are moot and applicants respectfully request withdrawal of the objections.

Double Patenting Advisement

On page 2 of the office action, the examiner advised that should claim 35 be found allowable, claim 48 would be objected to as being a substantial duplicate thereof. Applicants have canceled claim 35. Accordingly, the issue is moot.

Rejection of claims 32, 35, 36, 40, 43-45, and 48 under 35 U.S.C. § 102(b)

On page 3 of the office action, the examiner maintains the rejection of claims 32, 35, 36, 40, 43-45 and new claim 48 under 35 U.S.C. § 102(b) in view of Fraser, et al. (WO 99/57280).

Applicants: Rolando Pajon FeyL, et al.
Serial No.: 10/580,888
Filing Date: May 25, 2006
Docket No.: 976-33 PCT/US/RCE
Response to non-final office action issued March 13, 2009
Page 8 of 11

Applicants respectfully disagree. Applicants note that claim 47 was not rejected under 35 U.S.C. § 102(b) in view of Fraser. Merely in order to expedite prosecution, however, applicants have canceled claims 32, 35, 36, 40, 43-45. Fraser fails to teach or disclose a protein having the sequence consisting of SEQ ID NO: 4. Claim 48 has been amended to read a protein having “the amino acid sequence consisting of SEQ ID NO: 4.” New claims 49-57 also read on the protein having “the amino acid sequence consisting of SEQ ID NO: 4.”

Accordingly, the Fraser reference is not an anticipatory reference and does not anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection of claims 32, 35, 36-38, 40, 43-45, and 48 under 35 U.S.C. § 103(a) in view of the Fraser and Tai references

On page 8 of the office action, the examiner rejects claims 32, 35, 36-38, 40, 43-45, and 48 under 35 U.S.C. § 103(a) as being unpatentable over Fraser, et al (WO 99/57280) in view of Tai, et al (WO 97/28273).

Applicants respectfully disagree. Applicants note that claim 47 was not rejected under 35 U.S.C. § 103(a) over Fraser and Tai. Merely in order to expedite prosecution, however, applicants have canceled claims 32, 35, 36, 40, 43-45.

Fraser fails to teach or disclose a protein having the sequence consisting of SEQ ID NO: 4. The Tai reference fails to rectify the deficiencies of Fraser because it also fails to teach or disclose a protein having the sequence consisting of SEQ ID NO: 4.

Applicants: Rolando Pajon Fey, et al.
Serial No.: 10/580,888
Filing Date: May 25, 2006
Docket No.: 976-33 PCT/US/RCE
Response to non-final office action issued March 13, 2009
Page 9 of 11

Claim 48 has been amended to read a protein having “the amino acid sequence consisting of SEQ ID NO: 4.” New claims 49-57 also read on the protein having “the amino acid sequence consisting of SEQ ID NO: 4.”

Accordingly, a *prima facie* case of obviousness has not been made since the claimed invention as a whole would not have been known or obvious to one having ordinary skill in the art at the time of the invention. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection under 35 U.S.C. § 112, first paragraph

On page 12 of the office action, the examiner rejects claims 32, 35-38, 40, 43-45, and 48 under 35 U.S.C. § 112, first paragraph. According to the examiner, the specification only provides a description of a recombinant protein comprising the amino acid sequence set forth in SEQ ID NO: 4.

Applicants respectfully disagree. Applicants note that claim 47 was not rejected. Merely in order to expedite prosecution, however, applicants have canceled claims 32, 35-38, 40, and 43-45. Claim 48 has been amended to read a protein having “the amino acid sequence consisting of SEQ ID NO: 4.” New claims 49-57 also read on the protein having “the amino acid sequence consisting of SEQ ID NO: 4.”

Accordingly, applicants respectfully request reconsideration and withdrawal of the rejections.

Applicants: Rolando Pajon Feyt, et al.
Serial No.: 10/580,888
Filing Date: May 25, 2006
Docket No.: 976-33 PCT/US/RCE
Response to non-final office action issued March 13, 2009
Page 10 of 11

Rejection under 35 U.S.C. § 112, second paragraph

On page 16 of the office action, the examiner rejects claim 47 under 35 U.S.C. § 112, second paragraph. Applicants have amended claim 47 to read a protein “having the amino acid sequence consisting of SEQ ID NO.: 4.” Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection.

New Claim 57

Support for new claim 57 can be found throughout the specification, for example, on page 10 (lines 1-3); Figure 2; page 11 (lines 9-12); Example 3 on pages 13-15; and page 14 (lines 6-14). The N-terminus of P64k protein from *Neisseria meningitidis* is a known protein, as described by US Patent No. 6,146,635, which is commonly owned by the assignee of the present application.

Applicants: Rolando Pajon Feyt, et al.
Serial No.: 10/580,888
Filing Date: May 25, 2006
Docket No.: 976-33 PCT/US/RCE
Response to non-final office action issued March 13, 2009
Page 11 of 11

Conclusion

In view of the foregoing amendments and remarks, entry of the amendments and favorable consideration of the claims are respectfully requested. If the examiner has any questions or concerns regarding this amendment, he or she is invited to contact the undersigned at the telephone number listed below. If any fees are due or any overpayment made in connection with this paper, please charge or credit our Deposit Account No.: 082461.

Respectfully submitted,

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